

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
15000 SURVEYOR BLVD. SUITE 100
ADDISON, TX 75001
(972) 341-0500

BDFTE# 00000001366996

Attorney for PNC MORTGAGE, A DIVISION OF PNC BANK, NA SUCCESSOR TO NATIONAL CITY
BANK ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: § CASE NO. 09-35705-SGJ-13
§
AMY GOLDBLATT HOWARD, §
Debtor § CHAPTER 13

OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PNC MORTGAGE, A DIVISION OF PNC BANK, NA SUCCESSOR
TO NATIONAL CITY BANK ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST
(hereinafter "Creditor"), a secured creditor in this bankruptcy case, and files its Objection to
Confirmation of the Debtor's Chapter 13 Plan. In support thereof, Creditor would allege as
follows:

I.

Creditor is the secured servicer in this bankruptcy case. On or about March 24, 2005,
AMY GOLDBLATT HOWARD and JOHN HOWARD executed a ARM Note payable to
NATIONAL CITY MORTGAGE A DIVISION OF NATIONAL CITY BANK OF
INDIANA, in the original principal amount of EIGHT HUNDRED NINETY-FOUR
THOUSAND NINE HUNDRED DOLLARS AND ZERO CENTS, (\$894,900.00). The Note

and Lien were assigned to Creditor. The Note is secured by a first lien Deed of Trust on property described to wit:

LOT 17, BLOCK B OF THE REPLAT OF VILLAGES OF STONEBRIAR PARK, AN ADDITION TO THE CITY OF FRISCO, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME M, PAGE 390, MAP RECORDS, COLLIN COUNTY, TEXAS.

A copy of the Deed of Trust is attached hereto.

II.

On the date Debtor filed the petition for an Order of Relief, the Note was in default. On or about October 09, 2009, Creditor filed its Proof of Claim for arrears in the amount of \$93,873.43 and a principal balance of \$894,900.00 with a contract interest rate of 6.000%. A copy of the Proof of Claim is attached hereto.

III.

Debtor's Chapter 13 Plan proposes to pay \$61,341.86 over 60 months at 0.000% interest for the pre-petition arrears owing to Creditor. Creditor objects to the proposed treatment because the Plan:

- Fails to satisfy Creditor's Proof of Claim and also fails to pay interest on the arrearage pursuant to the terms of the Note and Deed of Trust and the Supreme Court holding in Nobleman v. American Savings Bank, 113 S. CT. 2106 (1993) and the Fifth Circuit holding In re Cabrera, 99 F.3d 684 (5th Cir. 1996).
- Attempts to modify the rights of Creditor in violation of 11 U.S.C. §1322 (b)(2).
Creditor's claim is secured only by a security interest in real property that is the Debtor's principal residence and 11 U.S.C. §1322 (b)(2) prohibits the modification of

Creditor's rights.

- Does not provide for full payment of the Creditor's allowed secured claim.
- Fails to timely cure the default reflected in the Proof of Claim as required in 11 U.S.C. §1322 (b)(5).

IV.

The plan is not feasible. Based on the Debtor's Chapter 13 Plan Summary, Schedules, and other Pleadings on file with this Court, the Debtor will not be able to make all payments under the Plan and to comply with the Plan. Therefore, confirmation should be denied as not meeting the requirements of 11 U.S.C. §1325(a).

WHEREFORE, Creditor prays that this Court deny confirmation of the Debtor's Chapter 13 Plan.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ ABBEY ULSH 11/20/2009

ABBHEY ULSH
TX NO. 24051459
15000 SURVEYOR BLVD. SUITE 100
ADDISON, TX 75001
Telephone: (972) 341-0500
Facsimile: (972) 341-0502
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR CREDITOR

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Objection to Confirmation. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing Objection to Confirmation he/she made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel, by contacting the Debtor's Counsel on November 03, 2009 at 12:37 pm. Sent letter agreement but received no response. This matter could not be resolved and the filing of the Objection to Confirmation was necessary.

/s/ ABBEY ULSH 11/20/2009

ABBEY ULSH

TX NO. 24051459

15000 SURVEYOR BLVD. SUITE 100

ADDISON, TX 75001

Telephone: (972) 341-0500

Facsimile: (972) 341-0502

E-mail: NDECF@BBWCDF.COM

ATTORNEY FOR CREDITOR

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2009, a true and correct copy of the Objection to Confirmation of Debtor(s) Chapter 13 Plan was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties listed on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP.

BY: /s/ ABBEY ULSH 11/20/2009

ABBEY ULSH
TX NO. 24051459
15000 SURVEYOR BLVD. SUITE 100
ADDISON, TX 75001
Telephone: (972) 341-0500
Facsimile: (972) 341-0502
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR CREDITOR

BY ELECTRONIC NOTICE OR REGULAR FIRST CLASS MAIL:

DEBTORS:

AMY GOLDBLATT HOWARD
5783 VERSAILLES AVE
FRISCO, TX 75034

AMY GOLDBLATT HOWARD
5783 VERSAILLES AVENUE
FRISCO, TX 75034

DEBTOR'S ATTORNEY:

HOWARD MARC SPECTOR
12770 COIT ROAD, STE 1100
DALLAS, TX 75251

TRUSTEE:

THOMAS DWAIN POWERS
125 E. JOHN CARPENTER FRWY.,
STE 1100
IRVING, TX 75062